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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/038,421

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9467

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03/23/2004

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EXAMINER

PREVIL, DANIEL

ART UNIT

PAPER NUMBER

2636

DATE MAILED: 03/23/2004

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/038,421

Applicant(s)

OLIVER ET AL.

Examiner

Daniel Previl

Art Unit

2636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This action is responsive to communication filed on January 12, 2004.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 9-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lezotte (US 5,839,821) in view of Morris et al. (US 6,087,660).

Regarding claim 1, Lezotte discloses thermal detection means (detectors 28, 30) for detecting a thermal change within a field of view (infrared detectors are used which are responsive to the thermal energy in the surrounding environment, including thermal energy generated by human beings and animals) (col. 2, lines 61-64); thermal detection means having a central axis within field of view (detectors 28, 30 in the center and in front face of a cavity 22) (fig. 2); and indicator which indicates the sensing of a heat source (bar-type display indicates the strength of the sensed thermal emissions) (col. 3, lines 29-31); whereby an operator may locate a heat source by sensing the presence of the heat source through the thermal detection means and then locating the position of the located heat source by directing the light beam from the light emitting means while viewing the location with a light viewing device (user monitors the LED array 8

while pointing the flashlight in the direction of a suspect but prevent the suspect from seeing the light generated by the LED array) (col. 3, lines 10-31); light beam being aligned generally parallel and closely adjacent to thermal detection means axis (light generated by light bulb 26 outward in the direction which the user points the flashlight 2 containing one or more detectors 28 and 30) (fig. 2; col. 2, lines 48-56).

Lezotte discloses every feature of the claimed invention but fails to explicitly disclose that light emitting means having a light beam of a wavelength outside the visible spectrum of a human.

However, Morris discloses light emitting means having a light beam of a wavelength outside the visible spectrum of a human (Led projecting beam 28a of infrared light; such infrared is invisible to natural human vision) (col. 6, lines 64-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Morris in Lezotte. Doing so would perform efficiently conduct surveillance tracking while eliminating the possibility of the operator being seen by hostile observers with their unaided vision for the safety purposes of the operators as taught by Morris (col. 1, lines 6-56).

Regarding claim 2, Lezotte discloses a second light emitting generating a beam of light in a visible spectrum (col. 3, lines 13-21); light beam

aligned generally parallel and closely adjacent to axis of thermal detection means (light generated by light bulb 26 outward in the direction which the user points the flashlight 2 containing one or more detectors 28 and 30) (fig. 2; col. 2, lines 48-56).

Regarding claim 3, Lezotte discloses a visual indication of the sensing of the heat source (LED array 8 produces a visible signal) (col. 3, lines 14-16).

Regarding claim 4, Lezotte discloses audible indication of the sensing of a heat source (audio speaker) (col. 5, lines 11-12).

Regarding claim 5, Lezotte discloses earpiece speaker (col. 5, lines 43).

Regarding claim 6, Lezotte discloses a housing (flashlight 2) (fig. 1); a thermal detector mounted within housing to detect a heat source generally along a field of view (infrared detectors are used which are responsive to the thermal energy in the surrounding environment, including thermal energy generated by human beings and animals) (fig. 2; col. 2, lines 61-64); generally centered along thermal detector field of view (fig. 2); an operator may locate a heat source by sensing the presence of the heat source through the thermal detector and then locating the position of the heat source by directing the light beam from the light emitting device while viewing device adapted to view the emitted wavelength (user monitors the LED array 8 while pointing the flashlight in the direction of a suspect but prevent the suspect from seeing the light generated by the LED

array) (col. 3, lines 10-31); a light emitting device mounted within housing positioned to emit a beam of light (fig. 2).

Lezotte discloses every feature of the claimed invention but fails to explicitly disclose a wavelength outside the visible spectrum of a human.

However, Morris discloses a wavelength outside the visible spectrum of a human (infrared light emitting diode (LED) projecting a beam 28a of infrared light; such infrared light is invisible to natural human vision) (col. 6, lines 62-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Morris in Lezotte. Doing so would perform efficiently conduct surveillance tracking while eliminating the possibility of the operator being seen by hostile observers with their unaided vision as taught by Morris (col. 1, lines 6-56).

Regarding claim 9, Lezotte discloses a second light emitting generating a beam of light in a visible spectrum (col. 3, lines 13-21); light beam aligned generally parallel and closely adjacent to axis of thermal detection means (light generated by light bulb 26 outward in the direction which the user points the flashlight 2 containing one or more detectors 28 and 30) (fig. 2; col. 2, lines 48-56).

Regarding claim 10, Lezotte discloses a visual indication of the sensing of the heat source (LED array 8 produces a visible signal) (col. 3, lines 14-16).

Regarding claim 11, Lezotte discloses audible indication of the sensing of a heat source (audio speaker) (col. 5, lines 11-12).

Regarding claim 12, Lezotte discloses earpiece speaker (col. 5, lines 43).

Regarding claim 13, Lezotte discloses a thermal detector (28, 30) having a beam of sensitivity along a central axis (fig. 2); light viewing device adapted to enable a viewer to view the light produced by light emitting device (users monitors the LED array 8) (col. 3, lines 13-21); and aligned generally along thermal detector beam of sensitivity central axis (fig. 2); whereby an operator may locate a heat source by sensing the presence of the heat source through the thermal detection means and then locating the position of the located heat source by directing the light beam from the light emitting means while viewing the location with a light viewing device (user monitors the LED array 8 while pointing the flashlight in the direction of a suspect but prevent the suspect from seeing the light generated by the LED array) (col. 3, lines 10-31).

Lezotte discloses every feature of the claimed invention but fails to explicitly disclose light emitting means having a light beam of a wavelength outside the visible spectrum of a human.

However, Morris discloses light emitting means having a light beam of a wavelength outside the visible spectrum of a human (col. 6, lines 57-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Morris in Lezotte. Doing so would perform efficiently conduct surveillance tracking while eliminating the possibility of the operator being seen by hostile observers with their unaided vision for the safety of operator as taught by Morris (col. 1, lines 6-56).

Regarding claim 14, Lezotte discloses a second light emitting generating a beam of light in a visible spectrum (col. 3, lines 13-21); light beam aligned generally parallel and closely adjacent to axis of thermal detection means (light generated by light bulb 26 outward in the direction which the user points the flashlight 2 containing one or more detectors 28 and 30) (fig. 2; col. 2, lines 48-56).

Regarding claim 15, Lezotte discloses a visual indication of the sensing of the heat source (LED array 8 produces a visible signal) (col. 3, lines 14-16).

Regarding claim 16, Lezotte discloses audible indication of the sensing of a heat source (audio speaker) (col. 5, lines 11-12).

Regarding claim 17, Lezotte discloses earpiece speaker (col. 5, lines 43).

Response to Arguments

3. Applicant's arguments filed on January 12, 2004 have been fully considered but they are not persuasive.

The Applicant has argued that neither Lezotte or Morris fail to disclose "a light beam of a wavelength outside the visible the visible spectrum of a human or a wavelength which is invisible to humans". The examiner respectfully disagrees with the Applicant because Lezotte clearly discloses a flashlight in the direction of a suspect, but prevent the suspect in front of the flashlight from seeing the light (col. 3, lines 15-21), meaning that if the suspect could not see the light therefore the light is outside of the visible spectrum of the suspect. And Morris discloses that infrared light is invisible to natural human vision (col. 6, lines 66-67). Both references disclose clearly what the Applicant claims as the patentable element in his/her application.

In response to Applicant's argument that there is no suggestion to combine Lezotte and Morris, the examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. In re Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re McLaughlin, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one

versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA) 1969. In this case both references are directed to light which is invisible to human suspect vision. Therefore the combination is proper.

In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Applicant's disclosure, such a reconstruction is proper. In re McLaughlin, 443 F. 2d 1392; 170 USPQ 209 (CCPA 1971).

For at least the above reason, the rejection of claims 1-6, 9-17 is sustained.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Winberg et al. (US 4,758,933) discloses a firearm with flashlight locator.

Melville et al. (US 6,097,353) discloses an augmented retinal display with view tracking and data positioning.

Anglin, Jr. et al. (US 6,069,557) discloses an automatic long-life infrared emitter and locator system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Previl whose telephone number is 703 305-1028. The examiner can normally be reached on Monday-Thursday. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Hofsass can be reached on 703 305 4717. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872-9314 for regular communications and 703 872-9315 for After Final communications.


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 305-4700.

Daniel Previl
Examiner
Art Unit 2632

DP
March 19, 2004



JEFFERY HOFSSASS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600